

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA)	NO. 1:CR-00-050-02
)	
v.)	
)	(Judge Caldwell)
KENNETH O. SIMMONS,)	
)	
Defendant.)	(ELECTRONICALLY FILED)

GOVERNMENT'S SUPPLEMENTAL RESPONSE
TO MOTION FOR RELIEF PURSUANT TO TITLE 18
UNITED STATES CODE SECTION 3582(c)

1. The defendant was previously convicted and sentenced for offenses involving the distribution of cocaine base, also known as crack cocaine.
2. The defendant was originally sentenced to a term of 360 months' imprisonment, a sentence which represented the low end of the guidelines imprisonment range which the Court found to be applicable in this case, 360 months to life imprisonment. That guidelines imprisonment range was based upon the Court's finding that the defendant's offense level was 38 and the defendant's criminal history category was V.
3. Following imposition of this sentence, in December 2007, the United States Sentencing Commission enacted an amendment to the sentencing guidelines, Amendment 706, which reduced the guidelines offense level for drug

distribution and conspiracy offenses involving cocaine base by two offense levels and further provided that this amendment applied retroactively to defendants who were sentenced before the effective date of this amended guideline.

4. The defendant moved pursuant to Title 18, United States Code, Section 3582(c), for relief in accordance with this amended guidelines provision.

5. Upon review of the defendant's motion and the underlying facts of this case, the United States agreed that the defendant was entitled to request some relief pursuant to Title 18, United States Code, Section 3582(c) and, in its original response, filed a motion requesting a two-level departure from his original guidelines.

6. On March 11, 2008, the U.S. Probation Office advised that, under the sentencing guidelines effective November 1, 2007, in excess of 40 kilograms of crack cocaine results in a base offense level of 38. Since the defendant Simmons was found at his sentencing hearing to be responsible for in excess of 40 kilograms of crack cocaine, his resulting base offense level would remain at 38. Thus, given that Simmons Criminal History Category and his base offense level remain unchanged by Amendment 706, he does not qualify for a reduction under 18 U.S.C. §3582(c).

WHEREFORE, for the aforestated reasons, the United States revises its previous response to the Court and requests that the Court deny Simmons' Motion for Relief.

Respectfully submitted,

MARTIN C. CARLSON
Acting United States Attorney

/s/ Gordon A.D. Zubrod
GORDON A.D. ZUBROD
Assistant U.S. Attorney
228 Walnut Street
Harrisburg, PA 17108
Phone: (717) 221-4482
Fax: (717) 221-2246
Gordon.Zubrod@usdoj.gov
PA 20792

Dated: March 18, 2008

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA)	NO. 1:CR-00-050-02
)	
v.)	
)	(Judge Caldwell)
KENNETH O. SIMMONS,)	
)	
Defendant.)	(ELECTRONICALLY FILED)

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 18th day of March, 2008, she served a copy of the attached

GOVERNMENT'S SUPPLEMENTAL RESPONSE
TO MOTION FOR RELIEF PURSUANT TO TITLE 18
UNITED STATES CODE SECTION 3582(c)

via electronic filing and/or by placing said copy in a postpaid envelope addressed to the person hereinafter named, at the place and address stated below, which is the last known address, and by depositing said envelope and contents in the United States Mail at Harrisburg, Pennsylvania.

James V. Wade, Esquire
Federal Public Defender
100 Chestnut Street
Harrisburg, PA 17101

Kenneth O. Simmons
Reg # 09983-067
FCI Loretto
POB 1000
Loretto, PA 15940

/s/ Carol A. Manies
CAROL A. MANIES
Legal Assistant